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Businesses

For  
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For  
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Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > 1984 and Prior > 1984 Rulings >

## Letter Ruling 84-102: Sales of Corporate Assets

November 13, 1984

You request a ruling as to the application of the Massachusetts sales tax to a sale of assets by \* \* \* ("Company") to an unrelated corporation ("Purchaser"). The assets to be sold include current equipment lease agreements, current conditional sales agreements, office furniture, office fixtures, and miscellaneous items. The assets to be sold constitute over ninety percent of the Company's total assets.

You state that the Company's principal place of business is in another state, but the Company does have a sales office in Massachusetts. Some of the lease agreements and conditional sales agreements were entered into with Massachusetts customers.

1. Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on retail sales made in Massachusetts. A sale is defined as any transfer of title or possession, including a lease or a rental. (G.L. c.64H, § 1(12)(a)). A retail sale is defined as a sale of tangible personal property for any purpose other than resale in the regular course of business. (G.L. c.64H, §1(13)). A retail sale takes place in Massachusetts if title or possession of the tangible personal property is transferred in Massachusetts. (See G.L. c.64H, § 1(12)(a), 2). The Company has assets of tangible personal property in Massachusetts. Transfer of possession of those assets will take place in Massachusetts. Therefore, the Company's sale of tangible personal property in Massachusetts will be subject to the sales tax, unless otherwise exempted.

2. Chapter 64H, Section 6(c) of the General Laws exempts from the sales tax casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail; provided, however, that nothing contained in this paragraph shall be construed to exempt any such sale of a motor vehicle or trailer as defined in section one of chapter ninety, or any such sale of a boat or airplane, from the tax imposed under chapter sixty-four I.

The Company is not regularly engaged in the business of selling at retail office furniture, office fixtures, and miscellaneous items. Therefore, the Company's sale of such items to the Purchaser is a casual and isolated sale and is not subject to the sales tax.

3. The Company engages primarily in the business of selling and leasing equipment through conditional sales agreements and lease agreements. The Company will assign its rights under such agreements to the Purchaser. The Purchaser, as the Company's assignee, will receive installment and lease payments under the agreements. The rights to the payments to be assigned to the Purchaser are not tangible personal property and are not subject to sales tax.

Copies of the Company's "boilerplate" lease agreements indicate that the equipment will be returned to the lessor at the end of the lease. The Purchaser, as the lessor's assignee, is thus buying tangible personal property to be returned to the Purchaser at the end of the lease as well as intangible rights under the agreements.

The sales tax is not imposed on sales for resale in the regular course of business. (See G.L. c.64H, §§ 1(13)). A vendor is relieved of his obligation to collect and pay sales tax if he accepts in good faith a resale certificate from a purchaser "who ... intends to sell [the tangible personal property] in

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the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose." (G.L. c.64H, § 8(b)).

Section 8(d) of Chapter 64H states that [if] a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him and the cost of the property to him shall be deemed the gross receipts from such retail sale. if the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect- to include in his gross receipts the amount of the rental charged rather than the cost of the property to him.

If the Purchaser intends to continue leasing out the equipment at the end of the lease, if the Purchaser intends to sell the equipment in the regular course of business at the end of the lease, or if the Purchaser cannot ascertain at the time of the Company's sale to it whether the property will be sold or will be used by the Purchaser, the Purchaser may present the Company with a resale certificate. If the Purchaser at the end of the lease makes any use of -he property other than retention, demonstration, or display while holding the equipment for lease or sale in the regular course of business, the Company's sale of equipment to the Purchaser will be deemed a retail sale, and the Purchaser will be liable to pay sales tax on the equipment at that time.

4. The Massachusetts sales tax is imposed on the total sales price received as consideration. (See G.L. c.64H, §§ 1(6), 2). "Sales price" is defined as the total amount paid as consideration, valued in money or otherwise. (G.L. c.64H, § 1(14)).

Copies of the Company's "boilerplate" lease agreements indicate that in case of loss of or damage to the equipment during the term of the lease, the lessee may, inter alia, pay the lessor the unpaid balance of the aggregate rent under the lease, plus the value of the lessor's residual interest in the equipment.

Because each lease apparently refers to the residual value of the leased equipment at the end of the term, that value should be readily calculable. The Purchaser will be buying equipment to be returned to it at the end of the leases. Therefore, if the Purchaser at the end of the lease makes any use of equipment other than retention, demonstration, or display while holding the equipment for sale or lease in the regular course of business, the sales price subject to sales tax will be the residual value of the equipment at the end of the lease.

Nothing in this ruling may be construed as a certificate under Section 44 or Section 52 of Chapter 62C that the Seller has no outstanding Massachusetts tax liability, or as a waiver of the lien provided for in Section 51 of Chapter 62C.

Very truly yours,

Commissioner of Revenue

IAJ:JES:loc

LR 84-102